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KNOWLES TAKES RED DOG CASE TO U.S. SUPREME COURT
Challenges Ninth Circuit Decision on EPA Action on Mine's Air Permit

Saying a recent Ninth Circuit Court decision undercuts the very core of a state's authority, the State of Alaska has filed an appeal before the U.S. Supreme Court of a ruling regarding the air quality permit at the Red Dog Mine, Gov. Tony Knowles announced today. The ruling by the Environmental Protection Agency (EPA) will cost the mine millions of dollars for no environmental benefits and undermines the authorities Congress granted to states to protect their airsheds while allowing economic development.

"The Ninth Circuit court decision undermines the long-standing balance of power struck by Congress and accepted by the states when they assumed the responsibilities by becoming approved to run a program," Knowles said. "This court decision effectively nullifies a meaningful role for states, creates serious uncertainty for our industries when valid state permits can be arbitrarily invalidated, and severely dampens states' ability to promote environmental protection without abandoning common sense."

At issue is whether the EPA has the authority under the Clean Air Act to invalidate a permit issued by an "approved" state, simply because it prefers a certain technology. Congress gave "approved" states authority to make permit decisions, as long as national air standards are met. In this case, Alaska's permit to the mine not only met all national air standards, it would have produced better environmental results at less cost using a more proven technology.

The nation's environmental laws have a long history of what has been called "cooperative federalism" where EPA sets national rules and states run the day-to-day programs from issuing permits to ensuring compliance.

The petition seeking court review will build upon a number of other instances where such debates have arisen under various environmental laws, yet those other appellate courts have upheld the states' authorities.

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The dispute centers on an air quality permit for a new diesel generator to support increased production at the mine north of Kotzebue. The state Department of Environmental Conservation (DEC) issued a permit which directed Cominco, the operators of the mine, to spend \$2.5 million to install effective air pollution control technology on the new generator and retrofit six existing engines with air pollution controls that meet all state and federal emission standards. The result permitted the mine's power generation to increase without a significant increase in air emissions.

Months after the public comment period closed on the DEC permit, EPA rejected the state's permit and insisted on a different technology which is more expensive, unproven in the Arctic, and could result in more air emissions than under the state permit. The EPA's mandated "selective catalytic reduction" technology is estimated at up to \$1.5 million more a year in operating costs and up to \$10 million more in construction costs than the state's preferred technology.

The state filing was docketed for consideration by the U.S. Supreme Court yesterday and the federal government has until November 30 to respond to the state's brief. The Court is expected to decide whether to accept the case for review by spring.

Knowles is also writing fellow Governors of western states to urge them to join an amicus brief supporting Alaska's challenge. The amicus brief is being prepared by the states of Wyoming and North Dakota.